IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4116 OF 2006

Sajid Mohammed Ismaiol Furniturewala ....Petitioner
V/s
Sanjay Kachardas Mutha & Ors..... ....Respondents.

Mr.A.A.Kumbhakoni i/by Ms.Jahan-Ara-A-Sarkhot, adv. For the petitioner.

Ms.Revati Mohite-Dere, Adv. For respondent Nos. 1 to 5.

CORAM: A.P.DESHPANDE, J.
4/9/07

PC:

By this petition the petitioners question the legality and validity of the order passed by the trial Court allowing the amendment application filed by the plaintiffs. Plaintiffs instituted a suit for specific performance of an agreement (visar pawati) and prayed for a direction against the defendant to execute yet another agreement (sathe khat). To put it straight the suit as was filed is for seeking specific performance of an agreement by executing yet another agreement. After the evidence of the plaintiffs and contesting defendant was over and after the present petitioner filed his affidavit of examination in chief an application for amendment was moved with a view to seek specific performance by praying for passing a decree for executing a sale deed. So instead of seeking decree for execution of an agreement (sathe khat) amendment is sought for executing a sale deed. In this factual background learned counsel for the petitioner placing reliance on a Division Bench judgment in the case of ***H.S.Khan & Sons & Anr.*** V/s ***Homi J. Mukadam***, 1991 (2) Bom.C.R 61 has submitted that an agreement to enter into an

agreement of sale is not legally enforceable. Reliance is placed on paragraphs 12 and 13 of the said judgment. Learned counsel for the respondents has submitted that crucial and decisive factor as to whether suit as filed is maintainable is as to whether (visar pawati) agreement dated 12.4.90 reveals that there was a concluded contract or otherwise. In the submission of the learned counsel for the respondents if the agreement (visar pawati) dated 12.4.90 reveals that there was a concluded contract then suit filed would be very much maintainable though the relief claimed is for execution of an agreement (sathe khat). The questions requires a deeper probe and scrutiny to find out whether in this fact situation the amendment application moved could have been granted or otherwise. It is difficult at this stage to hold that the impugned order suffers from patent illegality or error which is manifest, may be, on a deeper probe an illegality could be found but then this exercise would be beyond the scope of 227 jurisdiction. Leaving all questions raised in this petition open to be urged by the petitioner in Regular Civil Appeal in the event if the petitioner is required to file regular civil appeal, the present writ petition is disposed of. At this stage learned counsel for the respondents-plaintiffs urge that an order be passed for expeditious disposal of the suit preferably on day to day basis as the suit is pending since the year 1990. Learned counsel for the petitioner in all fairness does not oppose the prayer and rather joints in the request made. Having regard to the totality of facts and circumstances I direct the trial Court to decide the suit as expeditiously as possible and to the extent possible, on day to day basis.

4.9.07